

# Disciplinary and Other FINRA Actions

## Firms Fined, Individuals Sanctioned

Pond Equities (CRD #30934, Lawrence, New York), Stephen Joshua Greenberg (CRD #2324570, Registered Principal, Brooklyn, New York) and Shaye Hirsch (CRD #2776013, Registered Principal, Cedarhurst, New York) submitted an Offer of Settlement in which the firm was censured and was fined \$100,000, jointly and severally, with Greenberg and Hirsch. Greenberg and Hirsch were each suspended from association with any FINRA member in any principal capacity for 30 days. Without admitting or denying the allegations, the firm, Greenberg and Hirsch consented to the described sanctions and to the entry of findings that the firm, acting through its Anti-Money Laundering Compliance Officers (AMLCOs) Greenberg and Hirsch, failed to implement policies and procedures that could be reasonably expected to detect and cause the reporting of suspicious activities and transactions required under 31 U.S.C. 5318(g) and implementing regulations thereunder. The findings stated that the firm, Greenberg and Hirsch, failed to implement its written anti-money laundering (AML) policies and procedures by conducting any meaningful AML-related review of customer activity and by adequately reviewing suspicious activity and filing Suspicious Activity Reports (SARs) where appropriate. The findings also stated that, as a result of the firm's inadequate AML program, the firm, acting through Greenberg and Hirsch, failed to timely detect, investigate and report suspicious activity occurring in accounts, and the firm failed to develop and implement a written AML program reasonably designed to achieve and monitor its compliance with the requirements of the Bank Secrecy Act. The findings also included that the firm's written supervisory procedures did not contain relevant provisions addressing its AML compliance program. FINRA found that the firm, acting through Greenberg, failed to conduct heightened supervision of its producing managers' activities pursuant to the supervisory control system requirements of NASD Rule 3012, and failed to prepare an adequate annual report reporting suspicious activity relating to penny stock liquidations pursuant to the supervisory control system requirements of NASD Rule 3012.

Greenberg's and Hirsch's suspensions are in effect from May 17, 2010, through June 15, 2010. (FINRA Case #2007007360201)

## Reported for June 2010

FINRA® has taken disciplinary actions against the following firms and individuals for violations of FINRA rules; federal securities laws, rules and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB).

## Firms Fined

**Alerus Securities Corporation (CRD #35947, Grand Forks, North Dakota)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report to the OTC Reporting Facility (OTCRF) last sale reports of secondary market securities transactions in direct participation program securities (DPPs), which are required to be reported on the next business day after the date of execution between 8:00 a.m. and 1:30 p.m. Eastern Time. **(FINRA Case #2007011100301)**

**BMO Nesbitt Burns Trading Corp. S.A. (CRD #121291, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it transmitted Reportable Order Events (ROEs) to the Order Audit Trail System (OATS) that OATS rejected for context or syntax errors and, even though the ROEs were repairable, the firm failed to repair the ROEs so none of them were transmitted to OATS. The findings stated that the firm failed to provide documentary evidence that it performed the supervisory reviews set forth in its written supervisory procedures concerning OATS. **(FINRA Case #2008012328001)**

**Brookstone Securities, Inc. (CRD #13366, Lakeland, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$17,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to ensure that each of its registered representatives and registered principals participated in an annual compliance meeting. The findings stated that the firm failed to timely update a registered representative's Uniform Application for Securities Industry Registration or Transfer (Form U4) to disclose required information and failed to timely disclose customers' complaints pursuant to NASD Rule 3070. The findings also stated that the firm failed to report quarterly statistical customer complaints; failed, in some instances, to create and maintain a record of customers' complaints and related records that included the complainant's information; and, alternatively, failed to maintain a separate file that contained complainant's information. The findings also included that the firm failed to report transactions to the Trade Reporting and Compliance Engine (TRACE) and failed to evidence the creation and maintenance of order tickets for sell transactions in corporate bond transactions. **(FINRA Case #2008011675701)**

**Credit Suisse Securities (USA) LLC (CRD #816, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$127,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it transmitted reports to OATS that improperly reported Execution or Combined Order/Execution Reports with a reporting exception code when the Execution Reports were required to be matched to a related trade report in the Automatic Confirmation Transaction Service (ACT), the firm reported an incorrect capacity code for the same Execution Reports, and failed to include route report information or desk report information in OATS reports. In other instances, OATS was unable to match Route or Combined Order/Route reports from a sending firm to a

related New Order Report the firm submitted when it was named as the “Sent To Firm.” In addition, the firm failed to transmit ROEs to OATS.

The findings stated that the firm failed to report transactions in TRACE-eligible securities to TRACE within 15 minutes of the time of execution. The findings also stated that the firm failed to provide written notification disclosing to its customers the correct execution capacity on customer confirmations and that transactions were executed at an average price, and incorrectly disclosed on confirmations that a “commission” was charged for orders filled entirely in a principal capacity. In addition, the findings stated that the firm failed to provide written notification disclosing to customers the accurate compensation type, and that it was a market maker in the security. The findings also included that the firm effected transactions in securities while a trading halt was in effect with respect to each of the securities.

FINRA found that the firm failed to accept or decline in the NASD/NASDAQ Trade Reporting Facility (NNTRF) and the OTCRF numerous transactions in reportable securities within 20 minutes after execution that it had an obligation to accept or decline as the order entry identifier (OEID). In addition, FINRA found that the firm reported numerous transactions in municipal securities to the Real-time Transaction Reporting System (RTRS) with a null or numeric value in the Contra-party Correspondent ID field. FINRA also found that the firm failed to report information regarding transactions effected in municipal securities to the RTRS within 15 minutes of time of trade to an RTRS Portal and double-reported transactions in municipal securities to the RTRS. Moreover, FINRA found that for one month, the firm made available a report on the covered orders in national market system securities that it received for execution from any person that included incorrect information as to cancelled shares, away executed shares, average realized spread, average effective spread, price improved shares, price improved average amount and price improved average time. Furthermore, FINRA found that the firm transmitted trade reports for odd-lot trades and failed to report the transactions with the required odd-lot modifier of .RO to the NNTRF and the FINRA/NASDAQ Trade Reporting Facility (FNTRF). **(FINRA Case #2006005067801)**

**Daiwa Securities America Inc. nka Daiwa Capital Markets America Inc. (CRD #1576, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to timely report ROEs to OATS, transmitted New Order Reports and related subsequent reports to OATS where the timestamp for the related subsequent report occurred prior to the receipt of the order, and transmitted Route or Combined Order/Route Reports to OATS that OATS was unable to link to the related order routed to NASDAQ due to inaccurate, incomplete or improperly formatted data. **(FINRA Case #2008013545301)**

**EDI Financial, Inc. (CRD #15699, Dallas, Texas)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it acted as the sole placement agent for contingency offerings, and entered into agreements with an independent attorney to act as the independent administrator for the offerings rather than contracting directly with a bank to act as

the firm's escrow agent. The findings stated that the title of the first offering escrow account, which the attorney opened, did not change even after the offering had been closed and the new offering was instituted, and the firm never broke escrow before meeting the contingency for both offerings. The findings also stated that the firm established a bank account to hold funds related to the offerings separately, and the account was administered by an independent party. The findings also included that the firm failed to timely deposit customers' check into the escrow account after receipt. **(FINRA Case #2009016266601)**

**EKN Financial Services Inc. (CRD #113525, Woodbury, New York)** was fined \$32,500 and ordered to pay \$4,092.30, plus interest, in restitution to customers. The sanctions were based on findings that the firm effected transactions with retail customers at prices that were not fair and not reasonably related to the current market price of the security. The findings stated that the firm failed to preserve the order tickets for bond transactions at issue regarding the excessive markups, thereby failing to preserve required books and records. The findings also stated that the firm failed to exercise reasonable diligence to ascertain the best available price for its customers under the prevailing market conditions. **(FINRA Case #2005002259501)**

**Electronic Brokerage Systems, LLC (CRD #104031, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it transmitted Route or Combined Order/Route Reports to OATS that the OATS system was unable to link to the corresponding new order transmitted by the destination member firm due to inaccurate, incomplete or improperly formatted data. **(FINRA Case #2007010368001)**

**Garden State Securities, Inc. (CRD #10083, Red Bank, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$55,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it offered and sold unregistered securities that were not exempt from registration to customers. The findings stated that the firm made commission payments to representatives in branch offices through nonregistered entities. The findings also stated that the firm failed to make proper use of the Federal Trade Commission's national do-not-call registry, permitting its registered representatives to cold-call persons on that list. The findings also included that the firm, acting through a registered principal, prepared and used a telemarketing script and issued research reports in the form of newsletters that contained exaggerated, misleading or unwarranted statements and failed to disclose required information. FINRA found that the script contained statements regarding the purported aggregate performance of the firm's individual stock recommendations, but failed to include past years' performance information and a description of the risks associated with an investment in stock, including the risk of loss, and the script touted the successful performance of one of its stock recommendations and suggested that similar opportunities would be available in the future. FINRA also found that the firm's newsletters constituted research reports, which, among other things, made oversimplified, exaggerated, unwarranted and misleading statements regarding its stock recommendations. In addition, FINRA determined that the research reports contained or referenced performance charts that provided oversimplified and incomplete

presentations of the firm's performance track record. Moreover, FINRA found that the research reports did not adequately disclose any ownership interests and material conflicts of interest concerning its recommendations, and did not adequately disclose the meaning of the firm's "buy," "hold" and "sell" ratings. Furthermore, FINRA found that the research reports contained ratings and price targets for securities without including a line graph of the securities' daily closing prices for the required period and without disclosing the risks that could impede achievement of the price targets. **(FINRA Case #2008011696501)**

**Goldman, Sachs & Co. (CRD #361, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$7,500 and required to make an offer of restitution in the amount of \$2,504.75, plus interest, to investors. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that, in transactions for or with a customer, it failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resulting price to its customer was as favorable as possible under prevailing market conditions. **(FINRA Case #2009020375301)**

**Goldman Sachs Execution & Clearing, L.P. (CRD #3466, Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$13,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to append a .RO modifier to transaction reports submitted to the NNTRF that required a .RO modifier. **(FINRA Case #2009017826401)**

**GVC Capital LLC fka Bathgate Capital Partners LLC (CRD #38923, Greenwood Village, Colorado)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$10,000, ordered to pay \$700, plus interest, in restitution to investors and required to revise its written supervisory procedures regarding trade reporting, anti-intimidation and coordination, short sale requirements, firm personnel supervisory qualifications, quoting requirements, trading halts, best execution and SEC Rule 606. In light of the firm's financial status and revenues, a \$10,000 fine was imposed.

Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that, in transactions for or with a customer, it failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions. The findings stated that the firm incorrectly reported to the NNTRF or OTCRF, a clearing-only or non-tape, non-clearing report, because the firm incorrectly respectively designated transactions in designated securities and OTC equity securities as offsetting, "riskless" portions of "riskless" principal transactions when the transactions should have been media reported as principal transactions instead. The findings also stated that the firm failed to report to the NNTRF the correct execution time on clearing-only or non-tape, non-clearing reports for transactions in designated securities, and the correct price of the transaction on clearing-only or non-tape, non-clearing reports for transactions in designated securities. The findings also included that the firm accepted in the OTCRF transactions in OTC equity securities that failed to reflect the correct symbol indicating whether it

acted in a principal or agency capacity in connection with the transactions, and the firm executed short sale transactions and failed to report each of the transactions to the OTCRF with the correct symbol indicating whether the transaction was a buy, sell, sell short exempt or cross for transactions in OTC equity securities.

FINRA found that the firm executed short sale transactions in OTC equity securities and failed to report each of the transactions to the OTCRF with a short sale modifier. FINRA also found that the firm transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data, in that the firm incorrectly submitted New Order, Desk and Execution Reports instead of Order Execution Reports with the Desk field populated, or incorrectly submitted New Order and Execution Reports instead of Order Execution Reports. In addition, FINRA determined that the firm transmitted execution reports to OATS that the OATS system was unable to link to execution reports for the related trade reports due to inaccurate, incomplete or improperly formatted data. Moreover, FINRA found that the firm failed to provide written notification disclosing to its customer that transactions were executed at an average price. Furthermore, FINRA found that the firm provided written notification to its customer that contained an incorrect “commission” disclosure instead of a “commission equivalent” disclosure in connection with transactions where the firm acted in a principal or riskless principal capacity. The firm failed to show the correct execution time on memoranda for transactions. FINRA also found that the firm failed to show the execution price on memoranda for transactions for the account of the firm with another broker or dealer, executed long sale orders and failed to properly mark the orders as long sales, and failed to show the order receipt time on brokerage order memoranda. In addition, FINRA found that the firm’s supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and/or FINRA rules addressing trade reporting, anti-intimidation and coordination, short sale requirements, firm personnel supervisory qualifications, quoting requirements, trading halts, best execution and SEC Rule 606; and the firm failed to provide documentary evidence that it performed supervisory reviews concerning supervisory qualifications, SEC Rules 605 and 606, best execution, anti-intimidation and coordination, trade reporting, short sale requirements, quoting requirements, trading halts and OATS reporting. (FINRA Case #2007008060301)

**Jefferies & Company, Inc. (CRD #2347, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$70,000 and required to revise its written supervisory procedures regarding order handling and execution, best execution, trade reporting, sale transactions, and books and records. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report to the NNTRF the correct symbol indicating whether transactions were buy, sell, sell short or cross for transactions in reportable securities; failed to report the correct .PRP time for one transaction in a reportable security; failed to report the correct capacity for agency cross transactions; failed to report one last sale report of a transaction in a designated security; failed to report the cancellation of trades previously submitted; failed to submit for the offsetting, “riskless” portion of riskless principal transactions in designated securities, either a clearing-only report with a capacity indicator of “riskless principal,” or a non-tape, non-clearing report with a capacity indicator of “riskless



principal”; incorrectly submitted for the offsetting, riskless portion of one riskless principal transaction in a designated security, a tape or “media” report with a capacity indicator of “principal”; incorrectly reported in an agency capacity the principal leg of riskless principal transactions; and failed to report the correct capacity for principal transactions.

The findings stated that the firm inaccurately reported to the OTCRF the capacity for the street leg of riskless principal transactions, inaccurately reported the capacity for the street leg of riskless principal transactions while also inaccurately media-reporting the customer leg of the same riskless principal transactions, inaccurately media-reported the customer leg of one riskless principal transaction, failed to report the correct capacity for one principal transaction, double media-reported separate transactions and failed to report the correct capacity for one riskless principal transaction. The findings also stated that the firm transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data. The findings also included that the firm failed to provide written notification disclosing to its customer its correct capacity in transactions, that transactions were executed at an average price, that it was a market maker in each such security, the correct form of remuneration, and all the capacities in which it executed a multiple-capacity transaction, failed to provide written notification disclosing the correct form of remuneration and failed to provide written notification disclosing to a customer that it was a market maker in the security.

FINRA found that the firm failed to correctly mark its trading ledger as “long” or “short”; failed to show the terms and conditions on brokerage order memoranda; and failed to preserve for a period of not less than three years, the first two in an accessible place, one brokerage order memorandum. In addition, FINRA determined that the firm failed to report to the FNTRF the correct capacity in which it executed transactions in reportable securities; the correct execution time for transactions in reportable securities; and failed to correctly report riskless principal trades. Moreover, FINRA found that the firm incorrectly designed last sale reports of transactions as “.PRP” to the FNTRF. Furthermore, FINRA found that the firm’s supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and/or FINRA rules addressing order handling and execution, best execution, trade reporting, sale transactions, and books and records. Also, the firm failed to provide sufficient documentary evidence that it performed the supervisory reviews set forth in its written supervisory procedures concerning trading halts. (FINRA Case #2006007523801)

**Merrill Lynch Professional Clearing Corp. (CRD #16139, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$400,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that, during an approximate eight-year period, it submitted inaccurate New York Stock Exchange (NYSE) Form R-1 reports concerning the total of all debit balances in securities margin accounts due to erroneously including debits in its reports that did not truly reflect margin financing, but were instead attributable to the broad system of accounting the firm used for enhanced-leverage clients. The findings stated that the firm failed to provide for appropriate procedures of supervision and control, and failed to establish a separate system of follow-up and review concerning its Form R-1 regulatory reporting

requirement which caused the failure to detect that it was overstating margin debit balances on Forms R-1. **(FINRA Case #2008014161501)**

**Murphy & Durieu (CRD #6292, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$72,500 and required to revise its written supervisory procedures regarding TRACE reporting, supervisory system reviews, supervisory designation for trading, SEC Rules 605 and 606, limit order display and protection, market order protection, the One Percent Rule, best execution, the Three Quote Rule, anti-intimidation/coordination, trade reporting, sales transactions, trading halts, uniform quotes in multiple real-time quotation systems, firm quotes/backing away, soft dollar requirements, OATS, multiple market participant identifier (MPID) requirements, information barriers, books and records preservation, and prevention of unauthorized use of FINRA systems. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in TRACE-eligible securities that it was required to report to TRACE, and failed to report the correct contra-party's identifier for transactions in TRACE-eligible securities. The findings stated that the firm executed short sales transactions and failed to report them to the OTCRF with the correct symbol indicating whether the transactions were buy, sell, sell short, sell short exempt or cross; executed long sales transactions and failed to report them to the NNTRF with the correct symbol indicating whether the transactions were buy, sell, sell short, sell short exempt or cross for transactions in designated securities; failed to report to the OTCRF the correct symbol indicating the capacity in which it executed transactions; accepted transactions in OTC equity securities in the OTCRF that failed to reflect the correct capacity; failed to report to the OTCRF the cancellation of trades previously submitted to the OTCRF; incorrectly reported the second leg of "riskless" principal transactions as "principal" to the OTCRF; and failed to submit to the OTCRF, for the offsetting, "riskless" portion of "riskless" principal transactions in OTC equity securities, either a clearing-only report with a capacity indicator of "riskless principal" or a non-tape, non-clearing report with a capacity indicator of "riskless principal." The findings also stated that the firm failed to submit to the NNTRF, for the offsetting, "riskless" portion of "riskless" principal transactions in designated securities, either a clearing-only report with a capacity indicator of "riskless principal," or a non-tape, non-clearing report with a capacity indicator of riskless principal;" the firm failed to report to the NNTRF last sales reports of transactions in designated securities; submitted to the NNTRF duplicate clearing-only or non-tape, non-clearing reports with a capacity indicator of "riskless principal" for the offsetting "riskless" portion of "riskless" principal transactions in designated securities; and submitted clearing-only or non-tape, non-clearing reports to the OTCRF that incorrectly identified the executing and contra parties and provided the incorrect capacities in which the parties acted for the firm's offsetting "riskless" portion of transactions in OTC equity securities. The findings also included that the firm submitted clearing-only or non-tape, non-clearing reports to the NNTRF that incorrectly designated as ".PRP" its offsetting, "riskless" portion of transactions in eligible securities.

FINRA found that the firm transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data, and failed to submit reports to OATS concerning some orders. FINRA also found that the firm failed to immediately display customer limit orders in listed securities in its public quotation, when each such order



was at a price that would have improved its bid or offer in each security; or when the order was priced equal to its bid or offer in each security; or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each security, and the size of the order represented more than a *de minimis* change in relation to the size associated with the firm's bid or offer in each security. In addition, FINRA determined that the firm failed to provide written notification disclosing to its customers that transactions were executed at an average price.

Moreover, FINRA found that the firm failed to report transactions in TRACE-eligible securities to TRACE within 15 minutes of the execution time; failed to report the correct time of trade execution for transactions in TRACE-eligible securities to TRACE; and failed to show the correct execution time on memoranda for transactions for the firm's account with another broker or dealer. Furthermore, FINRA found that the firm failed to preserve for a period of not less than three years, the first two in an accessible place, customer confirmations of securities transactions, monthly account statements, and brokerage transaction memoranda associated with customer confirmations, memoranda of transactions for the firm's account with another broker or dealer, and the memoranda of transactions for the account of the firm with a customer other than a broker or dealer. The findings stated that the firm failed to show the correct execution time on memoranda of transactions for the account of the firm with a customer or other than a broker-dealer; failed to document accurate order entry times, order execution times, order type, terms and conditions and/or account information for transactions for the firm's account with a broker-dealer or customer other than a broker-dealer. In addition, FINRA determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and/or FINRA rules addressing TRACE reporting, books and records, supervisory system reviews, supervisory designation for trading, SEC Rules 605 and 606, limit order display and protection, market order protection, the One Percent Rule, best execution, the Three Quote Rule, anti-intimidation/coordination, trade reporting, sales transactions, trading halts, uniform quotes in multiple real-time quotation systems, firm quotes/backing away, soft dollar requirements, OATS, MPIDs, information barriers and the prevention of unauthorized use of FINRA systems. The findings included that the firm failed to provide documentary evidence it performed the supervisory reviews set forth in its written supervisory procedures concerning personnel registration and supervisory qualifications, SEC Rules 605 and 606, limit order display, market and limit order protection, the One Percent Rule, best execution, the Three Quote Rule, anti-intimidation/coordination, trade reporting, sales transactions, trading halts, uniform quotes in multiple real-time quotation systems, firm quotes/backing away, soft dollars, books and records, OATS, multiple MPID requirements, information barriers, and prevention of unauthorized use of FINRA systems. (FINRA Case #2006007009801)

**Network 1 Financial Securities Inc. (CRD #13577, Red Bank, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it accepted and held customer market orders, traded for its own account at prices that would have satisfied the customer market orders and failed to immediately thereafter execute the customer

market orders. The findings stated that the firm failed to contemporaneously or partially execute customer limit orders in NASDAQ securities after it traded each subject security for its own market-making account at a price that would have satisfied each customer's limit order. **(FINRA Case #2007011069801)**

**NYFIX Millennium, L.L.C. (CRD #103843, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$65,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to transmit ROEs to OATS; transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data, in that it failed to submit a special handling code in the case of pegged orders and transmitted a new order report to OATS under one MPID and reported the execution of the order to the FNTRF using a different MPID; transmitted non-media reports for odd-lot trades and failed to report the transactions with the required odd-lot modifier of .RO to the FNTRF. The findings stated that the firm made available reports on the covered orders in national market system securities that it received for execution from any person which included incorrect information, in that the firm incorrectly classified pegged orders as covered orders and, in the case of one data set as to statistics for the total canceled shares, total executed away, shares from 0-9 seconds, average realized spread, average effective spread, price improved average time, at-the-quote shares and at-the-quote average time. The findings also stated that the firm failed to report last sale reports of transactions in designated securities to the FNTRF. **(FINRA Case #2007010358201)**

**Pali Capital, Inc. (CRD #117783, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$25,000 and required to revise its written supervisory procedures regarding order handling, sale transactions, anti-intimidation/coordination, trading halts, soft dollar accounts and trading, OATS, Chinese walls, and books and records. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit last sale reports of transactions in designated securities to the FNTRF, and incorrectly designated last sale reports of transaction as ".PRP." The findings stated that the firm failed to report transactions in TRACE-eligible securities to TRACE within 15 minutes of the execution time. The findings also stated that the firm double reported transactions in TRACE-eligible securities to TRACE, and failed to report the correct trade execution time for transactions in TRACE-eligible securities. The findings also included that the firm failed to show the correct execution time on brokerage order memoranda.

FINRA found that the firm failed to provide written notification disclosing to its customer its correct capacity in the transaction, the correct average price and that the transaction was executed at an average price. FINRA also found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and/or FINRA rules addressing order handling, sale transactions, trading halts, soft dollar accounts and trading, OATS, Chinese walls, and books and records; and it failed to provide documentary evidence it performed the supervisory reviews set forth in its written supervisory procedures concerning order handling, anti-intimidation/ coordination, soft dollar accounts and trading, OATS, and books and records. **(FINRA Case #2008014261601)**

**PlanMember Securities Corporation (CRD #11869, Carpinteria, California)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to have in place any system or procedures for supervising a third-party vendor's breakpoint determinations. The findings stated that the firm outsourced its breakpoint determination to a third-party vendor and, due to a software programming error, the vendor failed to take certain B shares into consideration when determining the firm's customers' breakpoints, so customers were overcharged approximately \$4,000 for their mutual fund purchases; all customers were later reimbursed. The findings also stated that the firm's decision to outsource its breakpoint determinations to a third party did not relieve the firm of its ultimate responsibility for the outsourced activity. The findings also included that the firm failed to have adequate policies and procedures in place to monitor the outside vendor's compliance with the terms of its agreement with the firm, and to assess its continued fitness and ability to perform the outsourced activities. **(FINRA Case #2009016589701)**

**PNC Capital Markets LLC (CRD #15647, Pittsburgh, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report the correct contra-party's identifier for transactions in TRACE-eligible securities to TRACE. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA rules concerning TRACE. **(FINRA Case #2009016811301)**

**Rydex Distributors, Inc. (CRD #40805, Rockville, Maryland)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to transmit ROEs to OATS. **(FINRA Case #2008012206801)**

**Sterne, Agee & Leach, Inc. (CRD #791, Birmingham, Alabama)** was fined \$40,000. The sanction was based on findings that the firm's AML procedures were deficient in their implementation, in that the firm failed to detect and obtain certifications or equivalent information for certain foreign banks and send the notifications required by Section 311 of the Patriot Act to those banks, include procedures to comply with Section 312 of the Patriot Act to assess the money laundering risk presented by correspondent accounts maintained for foreign financial institutions, and implement customer identification procedures for delivery versus payment (DVP) accounts. **(FINRA Case #E052005007501)**

**TD Securities (USA) LLC (CRD #18476, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it accepted short sale orders in an equity security from another person, or effected short sales in an equity security for its own account, without borrowing the security, or entering into a bona fide arrangement to borrow the security; or having reasonable grounds to believe that the security could be

borrowed so that it could be delivered on the date delivery is due; and documenting compliance with SEC Rule 203(b)(1) of Regulation SHO. **(FINRA Case #2007011222801)**

**T.R. Winston & Company, LLC (CRD #10571, Bedminster, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$22,500 and required to revise its written supervisory procedures regarding SEC Rules 203(b)(3), 602, 605 and 606; limit order display; limit order protection; market order protection; order marking; trade reporting; trading halts and OATS. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it executed short sale transactions and failed to include the short sale modifier when reporting the transactions to the OTCRF and the NNTRF, incorrectly appended the short sale modifier to reports to the OTCRF and NNTRF of long sale transactions, and failed to use the correct symbol indicating whether it acted in a principal or agency capacity in transactions reported to the NNTRF and the OTCRF. The findings stated that the firm incorrectly media reported to the OTCRF transactions in OTC equity securities as “riskless” principal transactions when the transactions should have been reported as principal transactions; incorrectly reported to the OTCRF a clearing-only or non-tape, non-clearing report by misreporting the existence of offsetting “riskless” portions of “riskless” principal transactions when no such allocation to the customer had occurred; and incorrectly reported trades as offsetting “riskless” principal transactions when they should have been media reported as principal transactions. The findings also stated that the firm transmitted reports to OATS that omitted associated route reports and failed to transmit ROEs for orders that were subject to OATS reporting. The findings also included that the firm failed to provide written notification disclosing to its customer its correct capacity in transactions.

FINRA found that the firm’s supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and/or FINRA rules addressing SEC Rules 203(b)(3), 602, 605 and 606; limit order display; limit order protection; market order protection; trade reporting; order marking; trading halts and OATS. FINRA also found that the firm failed to provide sufficient documentary evidence that it performed the supervisory reviews set forth in its written supervisory procedures concerning SEC Rules 203(b)(3), 602, 605 and 606, market order protection and trading halts. **(FINRA Case #2007009069401)**

**Tejas Securities Group, Inc. (CRD #36705, Austin, Texas)** submitted an Offer of Settlement in which the firm was censured and fined \$75,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it opened and held customer funds and securities in an account at its clearing firm, and failed to make required reserve computations or deposits for the exclusive benefit of customers. The findings stated that the firm, acting through its president, failed to adequately supervise its handling of customer funds and securities by failing to delegate responsibility to personnel with the requisite registration, knowledge and experience to deal with issues in connection with the firm’s handling of customer funds and securities. The findings also stated that the firm, acting through its president, was required to establish and maintain a supervisory system reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA rules regarding supervision for each type of business in which it engaged and did not have any procedures regarding the handling of customer funds or securities received via

wire or journal transfer. The findings also included that the firm's president failed to ensure that the firm complied with SEC and FINRA rules in connection with its handling of customer funds and securities from a distribution standpoint. **(FINRA Case #2008011633401)**

**Triune Capital Advisors LLC (CRD #131275, Charlotte, North Carolina)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to transmit ROEs to OATS on numerous business days. **(FINRA Case #2008015022401)**

**Wall Street Money Center Corp. (CRD #21788, Boca Raton, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to preserve emails exchanged between the firm and one of its clearing firms. The findings stated that prior to employing electronic storage media, the firm failed to notify FINRA of its decision to use such media. The findings also stated that the firm failed to establish, maintain and enforce written procedures that addressed the use and retention of electronic communication. **(FINRA Case #2008011725601)**

**Wedbush Securities Inc. fka Wedbush Morgan Securities, Inc. (CRD #877, Los Angeles, California)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it reported last sale reports of transactions in designated securities to the FNTRF that it should not have reported. The findings stated that the firm failed to report to the FNTRF the correct execution time and the correct symbol indicating the capacity in which it executed the transactions. **(FINRA Case #2008014175801)**

## Individuals Barred or Suspended

**Cristiano G.M.C. Arndt (CRD #5293387, Foreign Associate, Sao Paulo, Brazil)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Arndt consented to the described sanction and to the entry of findings that he failed to respond to a FINRA request for documents and information. **(FINRA Case #2010022188701)**

**Joseph Arthur Bailey (CRD #2981737, Associated Person, South Plainfield, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which he was censured, fined \$10,000 and suspended from association with any FINRA member in any capacity for 10 business days. Without admitting or denying the findings, Bailey consented to the described sanctions and to the entry of findings that he acted as his member firm's chief compliance officer even though he was not qualified by examination in the required capacities of general securities representative, limited representative-corporate securities or general securities principal.

The suspension was in effect from April 19, 2010, through April 30, 2010. **(FINRA Case #2006004466102)**

**Joel Barrett (CRD #5441006, Registered Representative, Brooklyn, New York)** was barred from association with any FINRA member in any capacity. The sanction was based on findings that Barrett, without a bank customer's knowledge or authorization, signed the customer's name on a check withdrawal form requesting a \$25,000 check from the customer's account made payable to Barrett's friend, and the funds were later deposited into the friend's checking account. The findings stated that Barrett, without the customer's knowledge or authorization, activated and linked an ATM card to the bank customer's savings account and used the card to withdraw \$3,500 from the account for his own personal use and benefit. The findings also stated that Barrett failed to respond to FINRA requests for information and to appear and testify at an on-the-record interview. **(FINRA Case #2008014006701)**

**Jonathan Randolph Bock (CRD #4559261, Registered Representative, Houston, Texas)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 15 business days. Without admitting or denying the findings, Bock consented to the described sanctions and to the entry of findings that he failed to amend his Form U4 to disclose a material fact.

The suspension was in effect from May 17, 2010, through June 7, 2010. **(FINRA Case #2008015462601)**

**John Roy Boyer (CRD #1296554, Registered Representative, Missoula, Montana)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for two months. The fine must be paid either immediately upon Boyer's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Boyer consented to the described sanctions and to the entry of findings that he engaged in outside business activities by participating in the sale of equity-indexed annuities while registered with his member firm, and received approximately \$7,622.25 in commissions as a result of the sales. The findings stated that Boyer failed to provide prompt written notice to the firm regarding the outside business activities and signed an attestation form acknowledging that he was required to submit sales of equity-indexed annuities to be processed by the firm.

The suspension is in effect from May 3, 2010, through July 2, 2010. **(FINRA Case #2008016202501)**

**Bryan David Budvitis (CRD #4216953, Registered Representative, Aurora, Illinois)** was barred from association with any FINRA member in any capacity. The sanction was based on findings that Budvitis misappropriated a total of \$26,500 from a customer's account by completing Client Verbal Instructions Forms requesting that a check be issued to his family member, and funds transferred from the customer's account to his family member's account without the customer's permission or authority. The findings stated that Budvitis misappropriated an additional \$40,000 but later issued a stop payment on a check and deposited a cashier's check for the withdrawn funds back in the customer's account. The findings also stated that Budvitis failed to respond to FINRA requests for information and to testify at an on-the-record interview. **(FINRA Case #2008016013501)**



**Lawrence Bruce Card (CRD #1371765, Registered Principal, Clinton Township, Michigan)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for six months. The fine must be paid either immediately upon Card's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Card consented to the described sanctions and to the entry of findings that he falsely completed his member firm's annual compliance checklist certification and willfully failed to disclose material information on his Form U4.

The suspension is in effect from May 17, 2010, through November 16, 2010. **(FINRA Case #2009017985801)**

**Shawn Patrick Casuccio (CRD #4193661, Registered Representative, Fairmont, West Virginia)** was barred from association with any FINRA member in any capacity. The sanction was based on findings that Casuccio made material misrepresentations to induce customers to invest approximately \$723,000 in fictitious investments. The findings stated that rather than investing the money, Casuccio deposited approximately \$667,000 in his personal bank account for his own use and benefit. The findings also stated that Casuccio made payments totaling approximately \$56,000 to customers, telling them that these payments were either interest earned or a return on their investments. **(FINRA Case #2008015240601)**

**Jennifer Evelyn Cheeseman (CRD #5072581, Registered Representative, Stapleton, Alabama)** submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Cheeseman consented to the described sanction and to the entry of findings that she altered term life insurance policies in order to falsely represent that a husband and wife applying for insurance had life insurance coverage as set forth in the invalid policy contracts. The findings stated that Cheeseman sent the customers a policy that belonged to other customers, after falsifying the applicants' names and dates of the policy. The findings also stated that when the customers brought discrepancies to her attention, she provided them with another altered policy, and accepted a check from the customers for premium payments. **(FINRA Case #2009017334901)**

**Donald Edwin Derieg (CRD #1365963, Registered Representative, Encino, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Derieg consented to the described sanction and to the entry of findings that he served as an elderly customer's attorney-in-fact pursuant to a power of attorney designation, and became a co-successor trustee and a beneficiary of the customer's living trust. The findings stated that Derieg's member firm generally prohibited representatives from accepting fiduciary appointments, except in connection with family. The findings also stated that Derieg completed his firm's associate annual attestations, in which he failed to disclose that he was named as a co-successor trustee of the elderly customer's restated trust, that he was a beneficiary of her trust and life insurance policy, or that he was designated as an attorney-in-fact under the power of attorney should the customer become incapacitated. The findings also included that

Derieg improperly borrowed money from the customer when his firm's written procedures prohibited registered representatives from borrowing money from customers, other than family members, and only then with management approval, and Dereig did not notify the firm of the loans or obtain its prior approval. FINRA found that Derieg engaged in unauthorized transactions in the customer's investment portfolio that were unsuitable in light of the customer's deteriorating medical condition, her resulting financial situation and need for preservation of principal. (FINRA Case #2007009070901)

**Danial de Sade (CRD #4890224, Registered Representative, Peoria, Arizona)** submitted an Offer of Settlement in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the allegations, de Sade consented to the described sanction and to the entry of findings that he failed to provide timely testimony as FINRA requested and provided false, misleading and incomplete information to FINRA in response to written requests for information. (FINRA Case #2008014753301)

**Michael Phillip Dunham (CRD #1214230, Registered Principal, Nichols Hills, Oklahoma)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any FINRA member in any capacity for 20 business days. Without admitting or denying the findings, Dunham consented to the described sanctions and to the entry of findings that he exercised discretion in customers' account, without written authorization from the customers and his member firm's acceptance of the accounts as discretionary. The findings stated that Dunham attempted to settle a customer's anticipated complaint without notifying the firm of the customer's concerns or the fact that he had paid her a total of \$20,000 to settle, even though he did not have his firm's permission to settle customer complaints. The findings also stated that the customer did not cash the checks Dunham gave her and subsequently filed a complaint with the firm regarding the margin balance in her account.

The suspension was in effect from May 3, 2010, through May 28, 2010. (FINRA Case #2008016130001)

**Guy Christian Durand Jr. (CRD #3213856, Registered Representative, St. Albans, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for three months. Without admitting or denying the findings, Durand consented to the described sanctions and to the entry of findings that he effected private securities transactions away from his member firm by soliciting firm customers to purchase securities in a private placement. The findings stated that Durand failed to provide written notification to his firm prior to effecting these transactions.

The suspension is in effect May 17, 2010, through August 16, 2010. (FINRA Case #2006007002002)

**Walter Allen Ellis (CRD #1024597, Registered Principal, Chesterfield, Virginia)** was fined a total of \$22,500 and suspended from association with any FINRA member in any capacity for a total of one year. The fine is due and payable upon Ellis' return to the securities industry. The sanctions were based on findings that Ellis engaged in outside

business activities without providing prompt written notice to his member firm. The findings stated that Ellis managed customers' accounts and effected trades in commodity futures contracts and commodity futures options through commodity trading firms and earned commissions from the firms. The findings also stated that Ellis completed quarterly compliance questionnaires for his firm that inquired if he had engaged in an outside business activity while associated with the firm, and he answered "no" to this question, thereby knowingly providing false information to his firm, which caused its firm's books and records to be inaccurate. The findings also included that Ellis willfully failed to timely amend his Form U4 with material information.

The suspensions are in effect from April 5, 2010, through April 4, 2011. **(FINRA Case #2007007873101)**

**Remigio Paul Ferrara (CRD #2435505, Registered Representative, Springfield, Virginia)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Ferrara consented to the described sanction and to the entry of findings that he facilitated an investment by his member firm's customers in the form of a promissory note and did not provide written notice to, or obtain approval from, his firm prior to facilitating the investment. The findings stated that Ferrara failed to respond to FINRA requests for information and documentation. **(FINRA Case #2009017274001)**

**Ellis Gerald Halliburton (CRD #4505479, Registered Representative, Zebulon, North Carolina)** submitted a Letter of Acceptance, Waiver and Consent in which he was suspended from association with any FINRA member in any capacity for six months. In light of Halliburton's financial status, no monetary sanctions have been imposed. Without admitting or denying the findings, Halliburton consented to the described sanction and to the entry of findings that he participated in a private securities transaction, which consisted of his recommendation that a customer invest \$10,000 in an entity, while failing to provide his member firm with prior notice of this transaction. The findings stated that Halliburton's recommendation to the customer and her resulting investment of \$10,000 were unsuitable given her financial situation and needs.

The suspension is in effect from April 19, 2010, through October 18, 2010. **(FINRA Case #2007009605001)**

**Erin F. Harrison (CRD #4078930, Registered Representative, Ann Arbor, Michigan)** submitted a Letter of Acceptance, Waiver and Consent in which she was suspended from association with any FINRA member in any capacity for 45 days. In light of Harrison's financial status, no monetary sanctions have been imposed. Without admitting or denying the findings, Harrison consented to the described sanction and to the entry of findings that she failed to disclose material information on her Form U4.

The suspension is in effect from May 17, 2010, through June 30, 2010. **(FINRA Case #2008013951601)**

**Scott Anthony Harwell (CRD #2126913, Registered Supervisor, Mobile, Alabama)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the

findings, Harwell consented to the described sanction and to the entry of findings that he engaged in private securities transactions without prior written notice to, or prior written approval from, his member firm. The findings stated that Harwell offered for sale and sold unregistered shares of stock to individuals for which he collected funds totaling approximately \$130,950. The findings also stated that Harwell failed to respond to FINRA requests for information. **(FINRA Case #2008014617801)**

**Christopher Howard Head (CRD #1109474, Registered Principal, Grantham, New Hampshire)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Head consented to the described sanction and to the entry of findings that, at the account holder's request, he completed a form to liquidate an Individual Retirement Account (IRA) but was not authorized to sign the form for the custodian of the account. The findings stated that Head affixed the signature of an officer of the bank, who was authorized to sign the form, without the officer's knowledge and consent, and submitted the form by facsimile for processing. The findings also stated that Head failed to appear for a FINRA on-the-record interview. **(FINRA Case #2009016922601)**

**Robert Franklin Hockensmith Jr. (CRD #1798614, Registered Representative, Glendale, Arizona)** submitted an Offer of Settlement in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the allegations, Hockensmith consented to the described sanction and to the entry of findings that he participated in transactions involving investment in a purported foreign currency exchange (FOREX) trading program and did not seek his member firm's written authorization to participate, and the firm was unaware of and did not authorize his participation. The findings stated that the purported FOREX trading program was not a firm-approved product and the firm did not have a selling agreement with the purported trading program. The findings also stated that the firm's written procedures advised representatives that prior to engaging in a private securities transaction, representatives must submit a written request to the compliance department describing the proposed transactions and that written authorization from the compliance department must be received before a representative could engage in such conduct. The findings also included that Hockensmith completed and executed his firm's representative affirmations addressing the firm's policies and procedures regarding selling away/private securities transactions, and the firm addressed the topic at multiple annual compliance meetings, as well as issuing compliance bulletins/notices to its representatives regarding selling away/private securities transactions.

FINRA found that Hockensmith borrowed \$200,000 from a client without his firm's knowledge or consent and contrary to the firm's written procedures prohibiting representatives from borrowing from a customer. FINRA also found that Hockensmith executed representative affirmations agreeing to his firm's procedures manual regarding prohibited activities, which included borrowing from customers. In addition, FINRA determined that Hockensmith failed to respond to FINRA Rule 8210 requests for information. **(FINRA Case #2008013190801)**

**Anthony Amos Inkumsah (CRD #3127813, Registered Representative, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 20 business days. Without admitting or denying the findings, Inkumsah consented to the described sanctions and to the entry of findings that he failed to amend his Form U4 to disclose material information.

The suspension was in effect from May 17, 2010, through June 14, 2010. **(FINRA Case #2009017023601)**

**Ralph Charles Johnson (CRD #2239381, Registered Principal, Staten Island, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 10 business days. The fine must be paid either immediately upon Johnson's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Johnson consented to the described sanctions and to the entry of findings that he effected discretionary transactions in a customer's securities account. The findings stated that Johnson had a verbal agreement with the customer to exercise discretion in the account, but he did not obtain prior written authorization from the customer and his member firm's acceptance of the account as discretionary.

The suspension was in effect from May 17, 2010, through May 28, 2010. **(FINRA Case #2008013469901)**

**Stephen Paul Krauss (CRD #2678337, Registered Representative, Fairfield, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any FINRA member in any capacity for 30 business days. The fine must be paid either immediately upon Krauss' reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Krauss consented to the described sanctions and to the entry of findings that he effected discretionary transactions in a customer's securities account. The findings stated that Krauss had a verbal agreement with the customer to exercise discretion in the account, but he did not obtain prior written authorization from the customer and his member firm's acceptance of the account as discretionary.

The suspension is in effect from May 17, 2010, through June 28, 2010. **(FINRA Case #2009017313901)**

**Conrad Michael Lawrence (CRD #4467366, Registered Representative, Wichita, Kansas)** submitted an Offer of Settlement in which he was fined \$25,000, which includes \$4,000.32 in disgorgement of commissions, suspended from association with any FINRA member in any capacity for four months and ordered to pay \$21,280, plus interest, in restitution. The fine, disgorgement and restitution must be paid either immediately upon Lawrence's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the

allegations, Lawrence consented to the described sanctions and to the entry of findings that, in connection with the sale of an installment plan contract offered by an alleged charitable organization issued to a customer, Lawrence negligently misrepresented to the customer that he would receive a tax deduction. The findings stated that Lawrence recommended the installment plan contract without having a reasonable basis for the recommendation, and did not perform a reasonable investigation concerning the propriety of the alleged charitable organization or the installment plan contracts it offered. The findings also stated that Lawrence engaged in a private securities transaction without providing prior written notice to, and receiving prior written approval from, his member firm.

The suspension is in effect from May 17, 2010, through September 17, 2010. **(FINRA Case #2009019042201)**

**David Michael Logsdon (CRD #4178266, Registered Representative, Hailey, Idaho)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for five business days. Without admitting or denying the findings, Logsdon consented to the described sanctions and to the entry of findings that he exercised discretion in executing transactions in customers' accounts when he never obtained the customers' written authorization to exercise discretion, and his member firm did not accept the accounts as discretionary.

The suspension was in effect from May 17, 2010, through May 21, 2010. **(FINRA Case #2008012582901)**

**Michael Patrick Maser (CRD #4135703, Registered Representative, Boynton Beach, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Maser consented to the described sanction and to the entry of findings that he liquidated funds in the customers' securities accounts with the customers' understanding that he would use the funds to purchase fixed annuities on their behalf. The findings stated that, without the customers' knowledge, permission or authority, Maser deposited the funds into bank accounts he opened in each of their names. The findings also stated that he created passwords for the accounts which he used to instruct the bank to issue a \$23,800 check payable to himself at his home address and to have the bank make monthly payments to each of the customers that were equivalent to the payments they would have received had he purchased the annuities for them. **(FINRA Case #2009017001301)**

**Mark McEwen (CRD #4613500, Registered Principal, St. Charles, Missouri)** was barred from association with any FINRA member in any capacity. The sanction was based on findings that McEwen converted \$32,528.56 from a customer by falsely informing her that a check McEwen's member firm sent to her pursuant to a consent order with the Missouri Securities Division for unsuitable variable annuity sales to the elderly was sent to her by mistake and actually represented commissions the firm owed him. The findings stated that McEwen instructed the customer to deposit the check into her bank account and then make a check payable to him in the same amount; after the customer followed these instructions, McEwen cashed the check and deposited the funds into his personal bank account. The findings also stated that McEwen converted



an additional \$11,000 from the customer by depositing checks intended for investment into his personal bank account and failed to purchase investments on the customer's behalf. FINRA found that McEwen failed to appear for FINRA on-the-record testimony. **(FINRA Case #2008014940601)**

**David Eugene McIntire (CRD #2743679, Registered Representative, Sarasota, Florida)** was barred from association with any FINRA member in any capacity. The sanction was based on findings that McIntire failed to fully respond to FINRA requests for information and documents. **(FINRA Case #2008014672801)**

**James Carter McKelvain (CRD #1565890, Registered Representative, Burleson, Texas)** submitted an Offer of Settlement in which he was fined \$35,000, suspended from association with any FINRA member in any capacity for eight months and ordered to pay \$128,177.15 in disgorgement, less any amount already paid. Without admitting or denying the allegations, McKelvain consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without providing prior written notice to, and receiving prior written approval from, his member firm. The findings stated that, in connection with the sale of installment plan contracts offered by an alleged charitable organization, McKelvain presented sales materials to customers that contained misleading and oversimplified product descriptions that had not previously been provided to a firm registered principal for review and approval. The findings also stated that McKelvain negligently misrepresented to the customers that they would receive a tax deduction in connection with their investments. The findings also included that McKelvain engaged in the sale of these installment plan contracts, which were securities, without being properly registered with FINRA as a general securities representative.

The suspension is in effect from February 1, 2010, through September 30, 2010. **(FINRA Case #2007008899401)**

**Colleen Marie McMahon-Hill (CRD #5272881, Registered Representative, Surprise, Arizona)** was barred from association with any FINRA member in any capacity. The sanction was based on findings that McMahon-Hill applied by telephone for bank-issued credit cards in the names of bank customers, without the customers' authorization or consent, and used the cards to make unauthorized transactions totaling approximately \$5,642.97. The findings stated that McMahon-Hill acknowledged that she used the cards without the customers' permission and did not reimburse the bank for its losses. The findings stated that McMahon-Hill failed to provide FINRA with requested information. **(FINRA Case #2008016040401)**

**Juan Carlos Montanez-Gonzalez (CRD #1994470, Registered Representative, San Antonio, Puerto Rico)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Montanez-Gonzalez consented to the described sanction and to the entry of findings that he borrowed \$335,000 from firm customers, in contravention of his firm's written procedures, and then used the money to pay back another customer and to cover losses in other customers' accounts. The findings stated that Montanez-Gonzalez made material misrepresentations to customers concerning the features and guarantees of variable annuities, and misrepresented that the variable

annuities had no surrender charges and that the interest and principal were guaranteed. The findings also stated that Montanez-Gonzalez failed to respond to FINRA requests for information. **(FINRA Case #2008016449501)**

**Henry Morris (CRD #4675685, Registered Representative, East Hampton, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Morris consented to the described sanction and to the entry of findings that he refused to respond to FINRA requests for documents. **(FINRA Case #2010022123501)**

**Max Sean Nelson (CRD #3049381, Registered Representative, Savannah, Missouri)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for one year. In light of Nelson's restitution being ordered pursuant to a 2009 agreement entered into with the Missouri Attorney General, no restitution sanction was imposed. Nelson shall provide proof that he is in full compliance with any current agreement he has entered into with the Missouri Attorney General's office either prior to reassociation with a FINRA member firm or prior to any request for relief from any statutory disqualification, whichever is earlier. The fine must be paid either immediately upon Nelson's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Nelson consented to the described sanctions and to the entry of findings that he participated in private securities transactions involving the purchasing of commercial and residential rental properties, through investing and loaning of investors' funds in companies he controlled without prior written notice to, or written approval from, his member firm. The findings stated that Nelson completed his member firm's compliance questionnaires and, in response to the question, "I have only offered for sale securities and non-securities investments, which at such time were authorized by the firm in writing," Nelson falsely answered "Yes."

The suspension is in effect from April 19, 2010, through April 18, 2011. **(FINRA Case #2008015220001)**

**Paul Arnold Nilssen (CRD #1396224, Registered Principal, Staten Island, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$7,500 and suspended from association with any FINRA member in any principal capacity for 10 business days. Without admitting or denying the findings, Nilssen consented to the described sanctions and to the entry of findings that he failed to reasonably supervise his member firm's operations staff in connection with the issuance and hand delivery of checks to customers. The findings stated that Nilssen was aware of deficiencies but took inadequate steps to address them. The findings also stated that Nilssen failed to review the operations staff's practices or files to ensure that they always obtained forms that brokers completed to request that checks be issued from customer accounts, and receipts customers signed to acknowledge their receipt of hand-delivered checks.

The suspension was in effect from May 3, 2010, through May 14, 2010. **(FINRA Case #2007011308802)**

**Linus Nkem Nwaigwe (CRD #2613032, Registered Principal, Valley Stream, New York)** submitted an Offer of Settlement in which he was fined \$20,000 and suspended from association with any FINRA member in any principal capacity for nine months. The fine must be paid either immediately upon Nwaigwe's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the allegations, Nwaigwe consented to the described sanctions and to the entry of findings that, acting on his member firm's behalf, he failed to establish and enforce an adequate AML program, thereby failing to detect and investigate red flags of possible suspicious activity in firm accounts and failed to timely report such activity. The findings stated that Nwaigwe, acting on his firm's behalf, failed to perform the required independent AML testing for two years and performed an inadequate test another year. The findings also stated that Nwaigwe, acting on his firm's behalf, did not establish and implement policies, procedures and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder.

The suspension is in effect from April 19, 2010, through January 18, 2011. **(FINRA Case #2005001121401)**

**Casey Joseph OConnell (CRD #3029977, Registered Principal, Sparks, Nevada)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for two years. The fine must be paid either immediately upon OConnell's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, OConnell consented to the described sanctions and to the entry of findings that he failed to fully respond to FINRA requests for information.

The suspension is in effect from April 19, 2010, through April 18, 2012. **(FINRA Case #2008015567901)**

**Kevin Michael John O'Connor (CRD #1096256, Registered Principal, Greenwich, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$17,500 and suspended from association with any FINRA member in any principal capacity for 30 days. Without admitting or denying the findings, O'Connor consented to the described sanctions and to the entry of findings that he failed to establish, maintain and enforce an adequate supervisory system and written supervisory procedures related to the issuance, receipt and transmittal of checks payable to customers. In addition, the written supervisory procedures and supervisory system were inadequate because they did not provide for managerial review or supervision of the process. The findings stated that O'Connor failed to establish, maintain and enforce adequate written supervisory control procedures relating to NASD Rule 3012(a)(2)(B) and its requirement that members establish, maintain and enforce procedures reasonably designed to review and monitor transmittals of funds or securities between customers and registered representatives. The findings also stated that O'Connor failed to adequately enforce his member firm's procedures concerning penny stock transactions.

The suspension is in effect from May 17, 2010, through June 15, 2010. **(FINRA Case #2007011308803)**

**Victor Manuel Olivo Jr. (CRD #2159064, Registered Representative, Paramus, New Jersey)** was barred from association with any FINRA member in any capacity. The sanction was based on findings that Olivo engaged in trading on customers' behalf in his member firm's suspense account without his member firm's authorization. The findings stated that Olivo did not record these transactions, leaving his firm unaware of them and causing the firm to experience significant losses. The findings stated that Olivo failed to appear for FINRA on-the-record interviews. **(FINRA Case #2009017290101)**

**James Harold Opheim (CRD #1698507, Registered Representative, Spencer, Iowa)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Opheim consented to the described sanction and to the entry of findings that he wrongfully converted funds totaling approximately \$105,516.54 from customers, and attempted to wrongfully convert funds totaling approximately \$60,000 from another customer. The findings stated that Opheim converted, or attempted to convert, the funds by endorsing the checks that customers provided him without permission or authority and depositing the funds into his own personal account for his use and benefit. **(FINRA Case #2009018820201)**

**Carl A. Page (CRD #710908, Registered Representative, Bountiful, Utah)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for six months. The fine must be paid either immediately upon Page's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Page consented to the described sanctions and to the entry of findings that he participated in private securities transactions, without prior written notice to, and authorization from, his member firm. The findings stated that Page failed to provide his firm with prompt written notice of his outside business activity.

The suspension is in effect from May 3, 2010, through November 2, 2010. **(FINRA Case #2009016909201)**

**Jerry Perlman (CRD #360372, Registered Representative, Boca Raton, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Perlman consented to the described sanction and to the entry of findings that, while exercising control over the trust account for the benefit of an elderly customer, and while acting with the requisite scienter, he excessively traded the account in a manner that was inconsistent with the customer's investment objectives, financial situation and needs. The findings stated that Perlman recommended transactions to the customer without having reasonable grounds for believing that such transactions were suitable in light of the frequency of such transactions, the level of margin used in the account, and the customer's financial situation, investment objectives and needs. The findings also stated that Perlman's trading, for the life of the account, resulted in

losses of approximately \$551,000 and generated gross commissions of approximately \$118,000 and margin interest of approximately \$9,300. **(FINRA Case #2008011707002)**

**Alexis Jaqueline Pollard (CRD #5543185, Associated Person, Irvington, New Jersey)** was barred from association with any FINRA member in any capacity. The sanction was based on findings that Pollard willfully failed to disclose material information on her Form U4. The findings stated that Pollard failed to respond to FINRA requests for information. **(FINRA Case #2008013810901)**

**John Andrew Polychronis (CRD #1018808, Registered Representative, Rochester, New Hampshire)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for six months. The fine must be paid either immediately upon Polychronis' reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Polychronis consented to the described sanctions and to the entry of findings that he engaged in outside business activities without giving prompt written notice of those activities to his member firm. The findings stated that Polychronis wrote annuity business away from his firm, including sales of fixed annuities and an equity-indexed annuity. The findings also stated that when his firm questioned Polychronis on various occasions, he initially failed to disclose his outside activities and then later underreported its scope by falsely claiming that it had been limited to a single transaction.

The suspension is in effect from May 17, 2010, through November 16, 2010. **(FINRA Case #2009018386601)**

**Camelia Marie Pope (CRD #5293408, Registered Representative, Grand Prairie, Texas)** submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any FINRA member in any capacity for nine months. The fine must be paid either immediately upon Pope's reassociation with a FINRA member firm following her suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Pope consented to the described sanctions and to the entry of findings that she willfully failed to amend her Form U4 to disclose a material fact. The findings stated that Pope failed to timely respond to FINRA requests for information.

The suspension is in effect from May 17, 2010, through February 16, 2011. **(FINRA Case #2009018311501)**

**Jay Sheldon Potter Jr. (CRD #1585351, Registered Principal, San Diego, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any principal capacity for 15 business days. Without admitting or denying the findings, Potter consented to the described sanctions and to the entry of findings that he caused his member firm to operate in violation of the books and records and net capital provisions of the Securities Exchange Act of 1934. The findings stated that Potter failed to ensure that his firm's financial and operations principal (FINOP) was aware of certain liabilities and that the liabilities were properly recorded on the firm's books and records. The findings also

stated that Potter caused his firm to conduct a securities business while it was out of compliance with the net capital rule.

The suspension was in effect from May 17, 2010, through June 7, 2010. **(FINRA Case #2009018791001)**

**Gregory Ray (CRD #4676237, Registered Representative, Mount Vernon, Missouri)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Ray consented to the described sanction and to the entry of findings that he misappropriated approximately \$368,657 from customers by opening bank accounts, for which he was the signatory, in firm customers' names. The findings stated that through false representations, including false letters of authorization, Ray, without the customers' knowledge or consent, wired funds from the customers' firm accounts into the bank accounts that he had opened and used the funds for his personal use. **(FINRA Case #2008016200501)**

**Ronald Douglas Rogers (CRD #4398735, Registered Representative, Fairbank, Iowa)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$15,000, which includes disgorgement of commissions, and suspended from association with any FINRA member in any capacity for one month. The fine must be paid either immediately upon Rogers' reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Rogers consented to the described sanctions and to the entry of findings that he made an unsuitable recommendation to customers to each purchase \$1,000,000 variable life insurance policies, using \$30,000 that they had intended to use as a down payment for a home. The findings stated that Rogers' recommendation to the customers was unsuitable in light of their young age and lack of a need for \$1,000,000 in life insurance coverage. The findings also stated that Rogers received commissions totaling \$6,841.22.

The suspension was in effect from May 3, 2010, through June 2, 2010. **(FINRA Case #2008014061001)**

**Louis Salerno (CRD #4704237, Registered Representative, Bayside, New York)** was barred from association with any FINRA member in any capacity. The sanction was based on findings that Salerno failed to appear to provide testimony at FINRA on-the-record interviews. The findings stated that Salerno exercised discretion in a customer's account without the customer's written authorization and his member firm's acceptance of the account as discretionary. The findings also stated that Salerno sent electronic mail to a firm customer from a personal, unapproved email address and failed to seek or obtain his firm's permission prior to doing so. The findings included that because of Salerno's private email account, his firm was unable to review his emails to the customer and Salerno was able to shield his discretionary trading activity from his firm. **(FINRA Case #2008015360301)**

**Carlos Suazo (CRD #5481182, Registered Representative, Marina Del Rey, California)** was barred from association with any FINRA member in any capacity. The sanction was based on findings that Suazo misused \$12,000 that an individual gave him to purchase



a variable annuity, but Suazo never invested the funds and never returned the funds to the individual. The findings stated that Suazo's firm repaid the individual. The findings also stated that Suazo failed to respond to FINRA requests for information. **(FINRA Case #2008013754101)**

**Nicholas Jose Tangco (CRD #5477897, Registered Representative, Arlington, Texas)** was fined \$10,000 and suspended from association with any FINRA member in any capacity for two consecutive terms of nine months and two years. The fine shall be due and payable if and when Tangco applies to associate with a member firm following the end of his suspensions. The sanctions were based on findings that Tangco willfully failed to disclose material facts on his Form U4. The findings stated that Tangco failed to timely and to completely respond to FINRA requests for information and documents.

The suspensions are in effect from April 5, 2010, through January 4, 2013. **(FINRA Case #2008016429801)**

**Marvin J. Tick (CRD #3191057, Registered Representative, Meguon, Wisconsin)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 60 days. The fine must be paid either immediately upon Tick's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Tick consented to the described sanctions and to the entry of findings that he forged customer signatures on insurance forms and maintained a blank medical history questionnaire in a customer file that a customer had pre-signed, in violation of his member firm's policies. The findings stated that instead of having a customer complete and sign a correct application form after the customer had completed and signed the wrong form, Tick "cut and pasted" the customer's signature to the correct application form. The findings also stated that Tick forged customers' signatures on policy delivery acknowledgment forms and a "not taken" form.

The suspension is in effect from April 19, 2010, through June 17, 2010. **(FINRA Case #2008015322101)**

**Deborah Susan Usitalo (CRD #2985766, Registered Representative, South Lyon, Michigan)** submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Usitalo consented to the described sanction and to the entry of findings that she failed to respond to a FINRA request for information. **(FINRA Case #2009020417201)**

**James Richard Willard III (CRD #1212281, Registered Principal, Greene, New York)** was fined \$92,500 and suspended from association with any FINRA member in any capacity for two years. The fine is due and payable upon Willard's return to the securities industry. The sanctions were based on findings that Willard made an unsuitable recommendation to a customer without having a reasonable basis for believing that the recommendation was suitable based on the customer's age, investment objectives, risk tolerance, financial situation and needs. The findings stated that, in connection with the unsuitable transaction, Willard created false documents that caused his

member firm's books and records to contain false and misleading information regarding the customer's age. The findings also stated that Willard willfully reported false information and willfully failed to disclose material information on his Forms U4.

The suspension is in effect from February 16, 2010, through February 15, 2012. (FINRA Case #2006006046401)

**Tiffany Leigh Zachary (CRD #2924237, Registered Representative, The Woodlands, Texas)** submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$10,000 and suspended from association with any FINRA member in any capacity for six months. The fine must be paid either immediately upon Zachary's reassociation with a FINRA member firm following her suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Zachary consented to the described sanctions and to the entry of findings that she participated in a private securities transaction by introducing her member firm's client to an issuer offering a line of credit promissory note through an entity, received a \$50,000 commission for the transaction, and failed to provide her firm with prior notice of her participation in the transaction. The findings stated that Zachary engaged in an outside business activity by establishing a separate entity to receive the sales commission for the private transaction, but failed to provide her firm with prompt written notice of her participation in this outside business activity.

The suspension is in effect from May 17, 2010, through November 16, 2010. (FINRA Case #2008015839101)

## Decision Issued

The Office of Hearing Officers (OHO) issued the following decision, which has been appealed to or called for review by the NAC as of April 30, 2010. The NAC may increase, decrease, modify or reverse the findings and sanctions imposed in the decision. Initial decisions where the time for appeal has not yet expired will be reported in future issues.

**Oscar Gerardo Grados (CRD #4600863, Registered Representative, Tacoma, Washington)** was barred from association with any FINRA member in any capacity. The sanction was based on findings that Grados made unsuitable recommendations to customers that they obtain home equity loans, deposit the proceeds in their securities accounts at his member firm and use the proceeds to purchase mutual funds. The findings stated that Grados arranged a monthly transfer from each customer's account to a bank account from which the customer would make monthly loan payments. The findings also stated that Grados recommended the transactions knowing, as testified in an on-the-record testimony, that none of the customers were financially capable of purchasing the recommended mutual funds without resorting to a home equity loan. The findings also included that Grados knew that the customers would rely substantially on the mutual fund returns to make the required home equity loan payments and that, should the returns decline to the point of impairing their ability to make payments, they were at risk of losing their homes.

This decision has been appealed to the National Adjudicatory Council (NAC) and the sanction is not in effect pending consideration of the appeal. **(FINRA Case #2007011315901)**

## Complaints Filed

FINRA issued the following complaints. Issuance of a disciplinary complaint represents FINRA's initiation of a formal proceeding in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding these allegations in the complaint.

**Andrew Charles Callihan (CRD #4427620, Registered Representative, Lexington, Kentucky)** was named as a respondent in a FINRA complaint alleging that he withdrew, or caused the withdrawal of, a total of \$19,000 from bank customers' checking or retirement accounts, deposited the funds into his securities account without the customers' knowledge and consent, and used the funds for some purpose other than the customers' benefit. The complaint alleges that Callihan failed to respond to FINRA requests for information and documents. **(FINRA Case #2007010731201)**

**Arthur Albert Halleen (CRD #842624, Registered Representative, Pottsboro, Texas)** was named as a respondent in a FINRA complaint alleging that he borrowed approximately \$337,000 from firm customers without his member firm's permission or knowledge and in violation of firm policy by telling customers that he would invest in unspecified products and in unspecified ways outside of their firm accounts, would repay them at interest rates between 5 and 12 percent, and provided promissory notes to several customers setting forth the terms. The complaint alleges that Halleen repaid only approximately \$70,000 of the money he borrowed from customers, and ignored customers or stopped returning their calls when they inquired about repayment. The complaint also alleges that Halleen received \$24,000 from a customer for an unsecured promissory note and refused to repay the customer, thereby converting the \$24,000. The complaint further alleges that Halleen failed to respond to FINRA requests for information and documents. **(FINRA Case #2008014611101)**

**Robert A. Hoffmann (CRD #5291155, Registered Representative, Mesa, Arizona)** was named as a respondent in a FINRA complaint alleging that he withdrew a total of \$900 from bank customers by using their credit cards at ATM machines without the customers' or bank's permission, thereby converting funds from their accounts. The complaint alleges that Hoffmann signed customers' names on signature cards to reactivate dormant checking accounts without the customers' or bank's permission or authority. The complaint also alleges that Hoffmann failed to fully respond to FINRA requests for information and documents. **(FINRA Case #2008014739501)**

**Scott Douglas Stephenson (CRD #2057439, Registered Representative, Grants Pass, Oregon)** was named as a respondent in a FINRA complaint alleging that he recommended and effected purchases of an exchange-traded, closed-end fund in customers' accounts without having reasonable grounds for believing his recommendations were suitable for the customers, in light of the fund's predominantly speculative characteristics, as

well as the customers' risk tolerances, investment objectives and investment positions in relation to their entire liquid net worth. The complaint alleges that Stephenson signed customers' names to transaction, withdrawal and account application forms without their knowledge, authorization or consent, and submitted the forms to his member firm. **(FINRA Case #2007011436902)**

**Richard Herbert Westerman (CRD #826562, Registered Principal, Spokane, Washington)** was named as a respondent in a FINRA complaint alleging that he effected transactions in a customer's account and failed to obtain specific authorization from the customer and exercised discretion in the account without written authorization. The complaint alleges that Westerman failed to obtain his member firm's written acceptance of the account as discretionary before engaging in the transactions. **(FINRA Case #2007007990001)**

**Firm Suspended for Failure to Pay Arbitration Fees Pursuant to FINRA Rule 9553**

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

**Investscape Inc.**  
West Bloomfield, Michigan  
(April 8, 2010)

**Individuals Revoked for Failing to Pay Fines and/or Costs Pursuant to FINRA Rule 8320**

(If the revocation has been rescinded, the date follows the revocation date.)

**Ted David Baturin**  
Parkland, Florida  
(April 23, 2010)

**Aleksandr Yurievich Denisov**  
Marina Del Rey, California  
(April 22, 2010)

**Zachary Gedalia Hepner**  
New York, New York  
(April 22, 2010 – May 11, 2010)

**Individuals Barred Pursuant to FINRA Rule 9552(h)**

(If the bar has been vacated, the date follows the bar date.)

**Edwin Ayala**  
Tampa, Florida  
(April 5, 2010)

**Peter N. Kim**  
Palatine, Illinois  
(April 22, 2010)

**John James Mishorich**  
Carmel, Indiana  
(April 29, 2010)

**Lecelle Theresa Montgomery**  
Vauxhall, New Jersey  
(April 23, 2010)

**Jesse Anthony Rodriguez aka Jesus Anthony Rodriguez**  
Fontana, California  
(April 1, 2010)

**Christine Marie Smith**  
Arlington, Virginia  
(April 23, 2010)

**Individuals Suspended Pursuant to  
FINRA Rule 9552(d)**

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

**Kim Nat Bo**  
Woonsocket, Rhode Island  
(April 1, 2010)

**Timothy Martin Brunori**  
St. Petersburg, Florida  
(April 26, 2010)

**Mark Carmen Casolo**  
Voorheesville, New York  
(April 19, 2010)

**Eric David Clark**  
Royal Oak, Michigan  
(April 5, 2010 – May 3, 2010)

**Glenda Ann Dixon**  
Castro Valley, California  
(April 19, 2010)

**Donald Anthony Duarte Jr.**  
La Puente, California  
(April 12, 2010)

**Michael Feldman**  
Brooklyn, New York  
(April 19, 2010)

**Rhonda Lennett Harder**  
Oklahoma City, Oklahoma  
(April 30, 2010)

**Daniel J. Hopkins**  
Sun Prairie, Wisconsin  
(April 19, 2010 – May 3, 2010)

**Louis Konstantinos Katogyritis**  
Fort Lauderdale, Florida  
(April 19, 2010)

**David Louis Klein**  
Okeechobee, Florida  
(April 26, 2010)

**Mark Christopher Madison**  
Little Rock, Arkansas  
(April 19, 2010)

**Richard Bryan Main**  
McKinney, Texas  
(February 16, 2010 – April 9, 2010)

**Gustavo Adolfo Olivera**  
Atlanta, Georgia  
(April 23, 2010)

**Brent Allen Seil**  
Glendale, Arizona  
(April 19, 2010)

**Kaia Fusayo Strickland**  
College Park, Georgia  
(April 26, 2010)



**Individuals Suspended for Failure to Comply with an Arbitration Award or Settlement Agreement Pursuant to FINRA Rule 9554**

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

**John Cronin Astori**  
Scottsdale, Arizona  
(April 23, 2010)

**Jason Vij Bajaj**  
New York, New York  
(June 4, 2009 – April 8, 2010)

**Kirk Christopher Barrett**  
Weymouth, Massachusetts  
(April 14, 2010)

**Frank Julian Bluestein**  
Milford, Michigan  
(April 14, 2010)

**Frank Julian Bluestein**  
Milford, Michigan  
(April 23, 2010)

**Richard Anthony Darquea**  
Wellington, Florida  
(April 14, 2010)

**Mark Francis Harper**  
Stow, Ohio  
(April 14, 2010)

**Michael Shibley Horaney**  
Henderson, Nevada  
(April 14, 2010)

**Jason Neil Kraskiewicz**  
Fort Lauderdale, Florida  
(April 14, 2010)

**Robert Lee Mandeville**  
Newport Beach, California  
(April 14, 2010)

**Jaysen Christopher McCleary**  
Marina Del Rey, California  
(April 23, 2009 – April 20, 2010)

**Jaime Rodriguez**  
Massapequa Park, New York  
(April 6, 2010)

**Victor Michael Rodriguez**  
Levittown, New York  
(September 28, 2005 - April 14, 2010)

**Michael Andrew Sheriff**  
Monrovia, California  
(April 23, 2010)

## FINRA Fines Scottrade \$200,000 for Pattern Day Trading Violations

### Firm Also Improperly Extended Credit to Cash Account Customers

The Financial Industry Regulatory Authority (FINRA) announced that it has fined Scottrade, Inc. \$200,000 for violating pattern day trading margin rules and for extending credit to customers in violation of federal securities laws and banking regulations.

FINRA determined that Scottrade allowed certain margin account customers who executed a high volume of trades to continue to trade after the value of their accounts fell below the minimum equity requirement.

“The day trader margin rules were devised to limit the risk to which day traders expose clearing firms and the market while their positions are open during the course of the day,” said James S. Shorris, FINRA Executive Vice President and Executive Director of Enforcement. “Scottrade’s systems allowed day-trading customers to continue risky, leveraged day trading without meeting the \$25,000 minimum equity requirement.”

FINRA rules require margin account customers who meet the definition of “pattern day traders” to maintain at least \$25,000 in their margin accounts. A day trader is someone who buys and then sells the same stock in the same day in a margin account. A pattern day trader is generally defined as a customer who day trades four or more times in five business days.

FINRA found that from February 2006 through October 2007, Scottrade did not properly restrict pattern day traders’ trading activities when the value of those customers’ accounts fell below the required \$25,000. Instead, Scottrade sent first-time violators a written notice advising them to restore their account value to at least \$25,000 before continuing trading.

But customers who failed to restore their account values were allowed to continue day trading without restrictions. Customers who violated this margin requirement after the first warning were sent a second written notice, giving them five additional business days to meet the \$25,000 requirement. Scottrade did not take action to restrict those customers’ margin until after the customers failed to heed the second notice.

In all, Scottrade permitted customers in 11,708 margin accounts in which pattern day trading was being conducted to execute 171,910 day trades when the values of their accounts were below the minimum equity requirement.

FINRA also found that from February 2006 through January 2007, Scottrade improperly extended credit to certain cash account customers by failing to obtain timely cash payment from the customers for their purchases and by failing to cancel or liquidate those transactions within the time period specified by Federal Reserve Regulation T.

When a customer did not have sufficient funds to cover the cost of the stock purchase in a cash account, Scottrade sent the customer a “sellout” letter on the date the funds were due. This had the effect of allowing the customer additional days to pay for the transactions, in violation of Regulation T.

In concluding this settlement, Scottrade neither admitted nor denied the charges, but consented to the entry of FINRA's findings.

## **FINRA Fines Citigroup \$650,000 for Direct Borrow Program Deficiencies**

### **First Action Involving a Stock Borrow Program Cites Disclosure and Supervisory Failures**

In its first enforcement action involving a broker-dealer stock borrow program, the Financial Industry Regulatory Authority (FINRA) announced that it has fined Citigroup Global Markets, Inc. \$650,000 for disclosure and supervisory violations relating to the operation of its Direct Borrow Program (DBP).

FINRA's investigation found that between Jan. 1, 2005, and Nov. 30, 2008, Citigroup's DBP borrowed fully paid hard-to-borrow securities owned by the firm's customers, who were in large part retail customers. The borrowed securities went into a pool of securities used, among other things, to facilitate Citigroup's clients' short-selling strategies. The DBP arranged for more than 4,000 loans involving more than 770 different securities borrowed from more than 2,300 customers. The average annual value of outstanding loans from customers was approximately \$301 million.

FINRA found that Citigroup failed to disclose, or to adequately disclose, certain material information to customers participating in the DBP, including that the securities were hard-to-borrow; that the interest rates could be reduced by the firm; that the brokers received commissions for the duration of the loan; that while the securities were on loan, dividends were paid as "cash-in-lieu" of dividends and were therefore subject to higher tax rates; and, that shares on loan could be sold by the customers at any time.

"Before offering a product to customers, brokerage firms must reasonably ensure that the customers are aware of all of the potential risks associated with the transaction," said James S. Shorris, FINRA Executive Vice President and Executive Director of Enforcement. "In this case, Citigroup failed to maintain a supervisory system that ensured that such disclosures were made to customers by the firm's registered representatives and in the firm's marketing materials."

FINRA found that the DBP operated without a system or procedures specifically designed to supervise the activities of the DBP staff and the firm's brokers and to adequately monitor the accounts of customers who participated in the DBP.

Branch managers and supervisors were not notified that customers of brokers they supervised were participating in the DBP. FINRA found that many of the firm's branch managers and other supervisors were not even aware that the DBP existed. In addition, the traditional tools that were available to branch managers and other supervisors to monitor customer accounts were compromised when shares were lent through the DBP. Because a customer's account no longer reflected the customer's position in the security when the shares were lent through the DBP, exception reports—such as concentration reports and account market value loss reports—no longer captured the customer's account even if it became overly concentrated in the security or lost a significant amount of market value due to the lent security's loss in value. Therefore, the firm's ability to supervise values of positions, concentration levels, and on-going appropriateness of the loan transaction for the customers was compromised.

FINRA also found that Citigroup distributed three versions of marketing materials to the public regarding the DBP that were not fair and balanced and did not provide a sound basis for evaluating the facts in regard to the DBP. The marketing materials contained misleading statements that there was very little risk associated with the DBP, that no customers suffered any losses and that the firm tried to avoid interest rate changes as much as possible.

Citigroup suspended all new borrows through the DBP on Nov. 30, 2008 and, as of the date of the settlement, had returned all shares to customers who had lent through the DBP.

In concluding this settlement, Citigroup neither admitted nor denied the charges, but consented to the entry of FINRA's findings.

### **FINRA Files Complaint Against Morgan Keegan & Company for Misleading Customers Regarding Risks of Bond Funds and Advertising, Other Violations**

#### **FINRA Seeks Fine, Disgorgement of Profits, Full Restitution to Customers**

The Financial Industry Regulatory Authority (FINRA) announced that it has filed a complaint against Morgan Keegan & Company, Inc., charging the firm with marketing and selling seven affiliated bond funds to investors using false and misleading sales materials—costing investors well over \$1 billion. In addition to an unspecified fine, FINRA is seeking disgorgement of all ill-gotten profits and full restitution for affected investors.

From Jan. 1, 2006, through Dec. 31, 2007, Morgan Keegan sold over \$2 billion of the bond funds. The funds were invested heavily in risky structured products—particularly, subordinated tranches of asset- and mortgage-backed securities, including sub-prime products. Those investments caused the funds to experience serious financial difficulties beginning in early 2007 and led to their collapse later that year.

In its complaint, FINRA alleges that the misleading sales materials, combined with the firm's misleading and deficient internal guidance and failure to train its brokers about the risks, led Morgan Keegan's brokers to make material misrepresentations to investors. This was particularly acute with respect to one of the funds—the Regions Morgan Keegan Select Intermediate Bond Fund—which was marketed as a relatively safe and conservative fixed income mutual fund investment when, in fact, the fund was exposed to undisclosed risks associated with its investment in mortgage- and asset-backed securities and subordinated tranches of structured products.

FINRA also alleges that, despite the negative impact on the bond funds in early 2007—caused by the turmoil in the mortgage-backed securities market, most notably in the sub-prime home equity arena—Morgan Keegan failed, in any of its 2007 sales materials related to any of the bond funds, to disclose this to customers or that a substantial portion of the bond funds' portfolios were acutely affected by then-current economic conditions.

In its complaint, FINRA further alleges that Morgan Keegan failed to establish, maintain and enforce an adequate supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with federal securities laws and FINRA rules.

Specifically, FINRA's complaint alleges that:

- In its research, investment advice and performance updates to its brokers regarding the Intermediate Fund, Morgan Keegan failed to disclose the material characteristics and risks of investing in the fund, misstated the appropriate use of the fund and otherwise portrayed the fund as a safer investment than it was, even though the firm was aware of material, special risks that made the fund unsuitable for many retail investors.
- Morgan Keegan failed to ensure the accuracy of the advertising materials prepared by the fund manager and distributed by the firm, and failed to ensure that those materials disclosed all material risks, were not misleading and did not contain exaggerated claims.
- Morgan Keegan failed to train its brokers regarding the features, risks and suitability of the fund and, in its communications with its brokers, the firm failed to adequately describe the nature of the holdings and material risks of the Intermediate Fund.
- When Morgan Keegan became aware, beginning in early 2007, of the adverse market effects on the bond funds, the firm failed to timely warn its brokers or revise its advertising materials to reflect the disproportionately adverse effect the market was having on the performance of the securities that comprised the bond funds – which Morgan Keegan brokers continued to sell widely. At this time, the firm reassured, rather than warned, its sales force about the riskiness of the bond funds. As a result, some of the firm's brokers were unaware of the then-turbulent market's effects on the funds and failed to disclose the negative effects caused by market forces.

## **FINRA Fines D.A. Davidson & Co. \$375,000 for Failure to Protect Confidential Customer Information**

### **Confidential Records of Approximately 192,000 Customers Accessed by Hackers; Firm Credited for Response to Customers, Cooperation with Criminal Authorities**

The Financial Industry Regulatory Authority (FINRA) announced that it has fined D.A. Davidson & Co., of Great Falls, MT, \$375,000 for its failure to protect confidential customer information by allowing an international crime group to improperly access and hack the confidential information of approximately 192,000 customers.

FINRA found that prior to January 2008, D.A. Davidson did not employ adequate safeguards to protect the security and confidentiality of customer records and information stored in a database housed on a computer Web server with a constant open Internet connection. The unprotected information included customer account numbers, social security numbers, names, addresses, dates of birth and other confidential data. Furthermore, the firm's procedures for protecting that information were deficient in that the database was not encrypted and the firm never activated a password, thereby leaving the default blank password in place.

“Broker-dealers must be especially vigilant about protecting its customers’ confidential information, which includes ensuring that its technology is sufficient,” said FINRA Executive Vice President and Executive Director of Enforcement James S. Shorris. “In this case, the firm placed its database containing confidential customer information on a server that was perpetually exposed to the Internet, but failed to implement basic safeguards to protect that data—even though the firm had been advised before this incident to implement an intrusion detection system.”

FINRA found that on Dec. 25 and 26, 2007, D.A. Davidson’s database was compromised when an unidentified third party downloaded confidential customer information through a sophisticated network intrusion. To breach D.A. Davidson’s system, the hacker employed a mechanism called “SQL injection,” an attack in which computer code is repeatedly inserted into a Web page for the purpose of extracting information from a database. The hacker was able to access and download the affected customers’ confidential information. While these attacks were visible on Web server logs, the firm failed to review those logs.

FINRA also found that between April 2006 and October 2007, the firm had retained independent auditors and outside security consultants to review and/or audit its network security. During the course of those consultations, the firm received recommendations for enhancements to its security systems. Although the firm implemented the majority of those recommendations, it failed to implement a recommendation, made in or about April 2006, that it install an intrusion detection system. The firm had not implemented such a system at the time the hack occurred in December 2007.

The breach was discovered through an email that was sent by the hacker on Jan. 16, 2008, blackmailing the firm. Upon receiving the threat, D.A. Davidson reported the incident to law enforcement and assisted the Secret Service in identifying four members of an international group suspected of participating in the hacking attack of the firm. Three of those individuals have been extradited from Eastern Europe, arrested and are facing charges in federal court in Montana.

FINRA took into consideration the firm’s quick response to protect its customers and cooperation with law enforcement authorities and the fact that to date, no customer has suffered any instance of identity theft when assessing the fine in this matter.

In settling this matter, the firm neither admitted nor denied the charges, but consented to the entry of FINRA’s findings.

## **FINRA Charges McGinn, Smith & Co. and its President with Fraud in Sales of Unregistered Securities Firm, Two Co-Owners**

### **Also Charged With Submitting Falsified Documents to Investors and to FINRA**

The Financial Industry Regulatory Authority (FINRA) announced that it has filed a complaint against McGinn, Smith & Co., Inc., of Albany, NY, and its President and part owner, David L. Smith, charging them with securities fraud in the sale of tens of millions of dollars in unregistered securities. In addition to disciplinary sanctions, FINRA is



seeking disgorgement of all ill-gotten profits and full restitution to affected investors.

The FINRA complaint also charges the firm and Smith with misuse of investor funds, supervisory deficiencies and violation of securities registration rules. Smith was also charged with misrepresenting facts in letters he sent to investors. In addition, the firm, Smith and Timothy M. McGinn, co-owner of the firm and chairman of its board, were charged with providing FINRA staff with falsified documents.

The complaint alleges that from September 2003 through November 2006, the firm and Smith sold approximately \$89 million in income notes to 515 investors in four fraudulent securities offerings by four limited liability companies (LLCs) managed and controlled by Smith. FINRA also charged that the income notes, which are securities, were neither registered nor eligible for an exemption from registration.

According to the complaint, the firm falsely promised investors that their funds would be earmarked for a broad array of public and private investments. Instead, Smith misused the majority of the offering proceeds to benefit 26 business entities that he, McGinn and/or another firm owner controlled, or in which they maintained a financial interest (the “related companies”). The complaint alleges that most of the related companies were illiquid and had little or no revenues or were in poor financial condition at the time they received proceeds from the income note offerings. Smith allegedly misused approximately \$51 million of investor funds, directing approximately \$17 million to the related companies and approximately \$34 million more to make loans to them. Approximately \$22 million of those loans remain unpaid. Smith allegedly received personal loans of approximately \$590,000 from the related companies that were funded by investments made in the four LLCs.

The complaint alleges that the firm and Smith failed to disclose several material facts in connection with the four offerings, including that the LLCs would be investing and making loans to the related companies, that the LLCs would be making long-term loans and that the majority of offering funds would be invested in illiquid, non-public companies. The firm and Smith also allegedly misrepresented to investors that the firm would only receive a 2 percent underwriting/commission fee. The complaint alleges that, in fact, the firm received recurring annual commissions from the inception of the offerings, totaling approximately \$7.5 million – approximately 8.4 percent of the offering proceeds.

According to the complaint, the vast majority of the LLC investments were illiquid and non-performing. In 2008, Smith, acting on behalf of the LLCs, stopped all redemptions and sent two letters to investors misrepresenting that the firm and two of the related companies would waive or forgo further fees and commissions due to the poor financial condition of the income note issuers. But contrary to those representations, the complaint alleges, the firm and the two related companies subsequently took in approximately \$6.7 million in fees and commissions.

The complaint further alleges that, in response to a FINRA staff request for information, the firm, Smith and McGinn provided falsified documents, submitting backdated promissory notes for personal loans they and others previously received from two of the Related Entities.

## **FINRA Fines HSBC Securities (USA) \$1.5 million, US Bancorp \$275,000 for Auction Rate Securities Violations**

### **FINRA Found HSBC Sold ARS After Increased Risk Became Apparent; Both Firms Voluntarily Bought Back Over \$700 Million in ARS from Customers**

The Financial Industry Regulatory Authority (FINRA) announced that it has settled charges with two additional firms relating to the sale of auction rate securities (ARS) that became illiquid when auctions froze in February 2008: HSBC Securities (USA) and US Bancorp Investments, Inc.

HSBC, which was fined \$1.5 million, had by July 2008 repurchased more than 90 percent of its then current customers' ARS holdings and in October 2008 it offered to repurchase all of the remaining ARS held in those customers' HSBC accounts. In total, HSBC repurchased more than \$562 million of ARS held by its customers. As part of the settlement announced today, HSBC has agreed to offer to repurchase additional ARS sold to certain customers who transferred accounts before its previous buy-backs and to customers who chose not to participate in its prior offers.

US Bancorp Investments, which was fined \$275,000, has already completed a repurchase of more than \$150 million of ARS held in customer accounts.

To date, FINRA has concluded ARS-related settlements with 14 firms, imposing a total of nearly \$5 million in fines. Firms that have reached settlements with FINRA have returned more than \$2 billion to investors. Investigations continue at a number of additional firms.

"The failure of each of these firms to adequately disclose the risks associated with auction rate securities left customers unprepared for the failure of the auction market," said James S. Shorris, FINRA Executive Vice President and Executive Director of Enforcement. "As with our previous ARS settlements, FINRA's first priority has been to ensure investor access to the money frozen in their ARS investments. We are pleased that these firms have completed or agreed to complete offers to buy back frozen ARS from their customers."

### **HSBC**

FINRA found that during the relevant period, HSBC sold in excess of \$1 billion worth of student loan, municipal and preferred ARS to its customers.

FINRA found up until February 2008—when widespread auction failures froze ARS holdings—HSBC retail brokers recommended and sold ARS to customers, representing them as liquid and safe investments. But as of December 2007, it had become apparent to HSBC that credit markets were deteriorating and there were increased investment risks in ARS. In a December 2007 conference call, HSBC managers continued to suggest that brokers recommend ARS to retail customers, describing spikes in yields as "very advantageous" to customers. While noting "never say never" to the possibility of a failed auction, the managers indicated that they did not believe problems in the credit markets would affect ARS.

In an email after the conference call, a broker recommended to one of the managers that brokers should inform clients about the possibility and consequences of a failed auction for ARS. The next day, an ARS trading desk employee unsuccessfully sought the manager's permission to send an email to the firm's brokers concerning the heightened risk of owning ARS. The subsequent measures the firm took to notify its brokers of the risks associated with ARS were inadequate. The firm's retail brokers continued to recommend ARS as safe and liquid investments while failing to adequately notify customers of these increased risks.

FINRA also found that HSBC's advertising and marketing materials were not fair and balanced and that HSBC had sold certain unregistered ARS securities to customers who were not qualified to own them.

### **US Bancorp**

In the US Bancorp matter, FINRA found that the firm used internal marketing materials prepared by other securities firms that did not provide a balanced or adequate disclosure of risks of ARS. They described ARS as a "great place for short-term money" and a "cash alternative," but failed to disclose the liquidity risks of ARS. Other materials compared ARS yields to those of money market securities but failed to disclose the material differences between the investments, including differences in liquidity, safety and potential fluctuation of return. FINRA also found that US Bancorp failed to maintain procedures reasonably designed to ensure that its registered representatives accurately described ARS to customers during sales presentations. FINRA further found that ARS were added to the firm's approved product list without first being subjected to the usual due diligence process.

HSBC and US Bancorp agreed to a comprehensive settlement plan that has been applied in FINRA's previous ARS settlements. In these settlements, FINRA took into account that both firms had initiated their own repurchase offers and that each had offered to buy back ARS that had not been purchased at their firms.

In addition to individual retail ARS investors, the buy-back offers include non-profit charitable organizations and religious corporations or entities, trusts, corporate trusts, corporations, pension plans, educational institutions, incorporated non-profit organizations, limited liability companies, limited partnerships, non-public companies, partnerships, personal holding companies and unincorporated associations that made individual ARS purchases and whose account value did not exceed \$10 million.

As part of the settlements, the firms also agreed to participate in a special FINRA-administered arbitration program for eligible investors to resolve investor claims for consequential damages - that is, damages investors may have suffered from their inability to access funds invested in ARS. Additional information about the program can be found at [www.finra.org/ars](http://www.finra.org/ars).

In concluding these settlements, the firms neither admitted nor denied the charges, but consented to the entry of FINRA's findings.

## **FINRA Fines Five Firms \$385,000 for Sale of Unregistered Securities, Other Violations Relating to Penny Stocks**

### **Together, the Firms Sold 7.5 Billion Shares of Unregistered Universal Express Stock; Fagenson & Co. Also Found to Have Inadequate Anti-Money Laundering Program**

The Financial Industry Regulatory Authority (FINRA) announced that it has fined five broker-dealers a total of \$385,000 for the illegal sale of more than 8 billion shares of penny stock on behalf of their customers. Most of those illegal sales involved one penny stock company, Universal Express Inc. Together, the five firms sold more than 7.5 billion shares of that company's unregistered stock, for proceeds of approximately \$8.4 million.

Further, the firms failed to take appropriate steps to determine whether the securities could be sold without violating federal registration requirements—despite certain red flags indicating that illegal stock distributions might be taking place, including a major enforcement action by the Securities and Exchange Commission (SEC) involving Universal Express's unregistered stock.

The firms are Fagenson & Co., Inc., of New York, which reported earning \$44,000 in commissions from the sale of unregistered Universal Express stock and was fined \$165,000; RBC Capital Markets Corporation, of New York, which earned \$68,000 in commissions and was fined \$135,000; Alpine Securities Corporation, of Salt Lake City, which earned \$47,000 in commissions and was fined \$40,000; Equity Station, Inc., of Boca Raton, which earned \$13,575 in commissions and was fined \$25,000; and, Olympus Securities, LLC., of Montville, NJ, which earned \$5,200 in commissions and was fined \$20,000.

"Brokerage firms are the first line of defense when it comes to preventing the illegal distribution of unregistered securities into the public markets," said James S. Shorris, FINRA Executive Vice President and Executive Director of Enforcement. "The failure to detect and prevent these sales creates serious risks to the unsuspecting customers who purchased these unregistered securities."

FINRA found that in each instance, the firms' customers deposited large blocks of thinly traded securities in certificate form and then immediately liquidated those positions. The firm executed these sales despite the fact that the SEC had filed a complaint in early 2004 alleging that Universal Express had issued more than 500 million shares of unregistered stock for distribution to the public and charging Universal's CEO and others with issuing a series of false press releases and other false and misleading statements to promote the sale of that unregistered stock. In early 2007, a federal court ruling enjoined Universal Express from further violations of the securities laws. Ultimately, Universal Express was ordered to disgorge nearly \$12 million in ill gotten gains and interest, as well as nearly \$10 million in fines.

The five firms nonetheless executed most of the illegal sales of Universal Express unregistered stock either after the SEC commenced its suit or after it had prevailed in its enforcement action.

In addition, FINRA found that four of the five firms—Fagenson & Co., RBC Capital Markets, Alpine Securities and Olympus Securities—failed to establish, maintain and enforce a reasonable supervisory system designed to prevent the sale of unregistered stock.

- Fagenson & Co. – FINRA found that from March 2007 through May 2008, Fagenson & Co. executed customer sell orders for approximately 1.3 billion unregistered shares of Universal Express, as well as executing sell orders for unregistered shares of at least nine other issuers. Firm customers were permitted to deposit large blocks of unregistered shares in certificate form and immediately liquidate the positions. Total net proceeds to customers from the sale of Universal Express stock exceeded \$690,000, while total net proceeds from the sale of the other issuers' securities were over \$11 million. Further, the firm failed to develop and implement a reasonable anti-money laundering compliance program and failed to detect and report the suspicious activities of its customers who engaged in these transactions.
- RBC Capital Markets Corporation – FINRA found that from June 2006 through October 2007, RBC Capital Markets and a predecessor entity, Carlin Equities LLC, executed customer sell orders for nearly 2.5 billion unregistered shares of eight issuers, including over two billion shares of unregistered Universal Express stock. Customers were permitted to deposit large blocks of unregistered shares in certificate form and immediately liquidate the positions, for total net proceeds to customers of approximately \$2.7 million.
- Alpine Securities Corp. – FINRA found that from July 2006 through July 2007, Alpine Securities executed customers' sale orders of approximately 2.1 billion unregistered shares of Universal Express stock. Customers were permitted to deposit large blocks of unregistered shares in certificate form and immediately liquidate the positions, for total net proceeds to customers of approximately \$2.7 million.
- Equity Station, Inc. – FINRA found that from December 2005 through June 2007, Equity Station executed customer sell orders for nearly two billion unregistered shares of Universal Express stock. Customers were permitted to deposit large blocks of unregistered shares in certificate form and immediately liquidate the positions for total net proceeds to customers of approximately \$2.5 million.
- Olympus Securities, LLC – FINRA found that in December 2004 and from December 2006 through March 2007, Olympus Securities executed customer sell orders for more than 92 million unregistered shares of Universal Express stock. Customers were permitted to deposit large blocks of unregistered shares in certificate form and immediately liquidate the positions for total net proceeds to customers of approximately \$198,000.

### **FINRA Bars Prestige Financial Head Trader/Compliance Officer Who Scammed Customers Through Fraudulent Trading Scheme**

The Financial Industry Regulatory Authority (FINRA) announced that it has permanently barred Tod Bretton, former Chief Compliance Officer and Head Trader for Prestige Financial, Inc., of New York, for engaging in a fraudulent trading scheme that generated approximately \$1.3 million in profits for him and his firm at the expense of customers by subjecting their orders to improper and undisclosed additional charges. To conceal

the scheme, Bretton falsified order tickets and created inaccurate trade confirmations. Bretton also failed to cooperate with FINRA's investigation.

"Investors are entitled to have their stock trades handled properly by their brokers," said James S. Shorris, FINRA Executive Vice President and Executive Director of Enforcement. "In this case, Bretton ignored his obligations, choosing instead to enrich himself at the clients' expense, and to conceal this with falsified firm records. That he was both the Head Trader and Chief Compliance Officer for the firm makes this misconduct especially offensive."

FINRA found that, from at least September 2006 through June 2009, Bretton, working from the firm's New York office, engaged in a fraudulent trading scheme in which he took advantage of customers placing large orders (generally 1,000 shares or more) to buy or sell stocks. Rather than effecting the trades in the customers' accounts, FINRA found, Bretton first placed the orders in a firm proprietary account. He would then increase the price per share for securities purchased by approximately \$.02 to \$.05 above the market price before allocating the shares to the customers' accounts. Similarly, he would decrease the price per share for securities sold by approximately \$.02 to \$.05 below the market price before allocating the proceeds to the customers' accounts. This improper price change was not disclosed to or authorized by the customers.

Bretton's trading scheme generated approximately \$1.3 million in profits for the proprietary accounts, in which he had a 33 percent interest. Bretton personally earned approximately \$429,000 from this scheme.

FINRA found that to conceal his fraud, Bretton entered false information on the corresponding order tickets regarding the share price and the time the customer order ticket was received, entered and executed. Moreover, the corresponding trade confirmations inaccurately reflected the price, mark-up and/or commission charged and the order capacity.

Finally, Bretton also failed to cooperate with FINRA's investigation by failing to comply with his obligation to appear for investigative testimony.

In settling this matter, Bretton neither admitted nor denied the charges, but consented to the entry of FINRA's findings.

### **FINRA Orders Westpark Capital to Pay \$400,000 for Failing to Supervise Brokers with Histories of Disciplinary Actions, Customer Complaints Who Churned Accounts, Engaged in Unauthorized and Unsuitable Trading**

#### **Chief Operations Officer, Former Chief Compliance Officer Also Named; Former Brokers Barred, Former Branch Manager Disciplined in Separate Actions**

The Financial Industry Regulatory Authority (FINRA) announced that it has ordered Los Angeles-based Westpark Capital, Inc. to pay a total of \$400,000 for supervisory system failures, and has suspended two officers for failing to supervise brokers in two now-closed Long Island branches who churned customer accounts and engaged in



unauthorized and unsuitable trading in multiple accounts. The monetary sanction includes a \$100,000 fine and \$300,000 in restitution to affected customers.

FINRA suspended Westpark's former Chief Compliance Officer, William A. Morgan, for four months in any principal capacity and ordered him to pay a \$5,000 fine. Chief Operations Officer Jason S. Stern has been suspended for three months in any principal capacity and fined \$20,000.

In related actions, FINRA has barred and/or fined two brokers and a branch manager who were previously employed in Westpark's Long Island branch offices, and has filed a complaint against another former broker involved in the misconduct, charging him with churning accounts and other violations. Two additional former brokers involved have already been barred, by FINRA or the Securities and Exchange Commission, for misconduct at other firms prior to or after their employment with Westpark.

Several of the brokers involved came to Westpark from broker-dealers that had lengthy disciplinary records and that FINRA has expelled from the securities industry, such as Stratton Oakmont, Inc., LH Ross & Co., Salomon Grey Financial Corp. and Continental Broker-Dealer Corp. When Westpark hired them, several of the brokers themselves had histories that included multiple customer complaints and/or disciplinary actions.

"When a firm and its senior managers have reason to be aware of potential problems and fail to address the issues appropriately, they have not fulfilled their supervisory obligations," said James S. Shorris, FINRA Executive Vice President and Executive Director of Enforcement. "Westpark's failure to recognize and respond adequately to both broker- and customer account-related issues, involving brokers who came from troubled brokerage firms, resulted in significant customer harm."

In its action against Westpark, Morgan and Stern, FINRA found that between February 2006 and July 2007, the firm failed to establish and maintain an adequate system for supervising its brokers. Among the supervisory system's deficiencies:

- Westpark failed to restrict the activities of certain Long Island brokers and failed to monitor their customer account activities, even though they had disciplinary histories and customer complaints that included unauthorized, unsuitable and excessive trading;
- The firm performed inadequate monitoring of excessive trading, failed to have standards for what constituted excessive trading and failed to prescribe any steps that would be taken if excessive trading were suspected; and
- The firm's system assigned front line supervisory responsibility to branch office managers, even though the Long Island managers were inexperienced or had previously been disciplined for failure to supervise.

FINRA also found that despite the fact that Westpark had placed all of the brokers in question on "heightened supervision," Morgan and Stern failed to supervise several brokers who committed serious sales practice violations—including unauthorized, unsuitable and excessive trading involving at least 19 customer accounts.

FINRA also found that Morgan and Stern failed to adequately scrutinize the conduct of the Long Island brokers and to address red flags, including disciplinary and employment histories, customer complaints and questionable account activity, such as evidence of excessive trading, a high level of margin and frequent concentration of customer accounts in a single security.

In related actions, FINRA has taken the following actions against a former branch manager and former brokers at Westpark's former Long Island branches:

- Robert A. Bellia, Jr., a former branch manager, was barred permanently from association with any securities firm in a principal capacity and ordered to pay a \$10,000 fine. FINRA found that Bellia failed to supervise three Westpark brokers who churned and executed unsuitable and unauthorized trades in at least 12 customer accounts.
- Dale R. Menendez, Jr., a former broker, was barred permanently from the industry by a FINRA Hearing Officer and ordered to pay over \$110,000 in restitution to his customers. The Hearing Officer found that Menendez engaged in excessive and unauthorized trading, mischaracterized customer transactions to his firm and failed to appear for testimony during the FINRA investigation of his conduct.
- Michael Quattalaro, a former broker, was barred permanently from the securities industry. FINRA found that Quattalaro churned and engaged in excessively unsuitable trading in two customer accounts and exercised discretion in those accounts without prior written customer authority.
- Chanse K. Menendez, Sr., a former broker, has been charged in a FINRA complaint with excessive trading and churning activity in two customer accounts. The complaint also alleges that Menendez mischaracterized "solicited" trades as "unsolicited" trades in an apparent attempt to conceal his misconduct in those accounts, as well as in a third account. In addition, the complaint alleges that Menendez failed to appear for testimony and provide documents during the FINRA investigation of his conduct. The case is pending.

In concluding the settled proceedings, Westpark, Morgan, Stern, Bellia and Quattalaro neither admitted nor denied the charges, but consented to the entry of FINRA's findings.

With respect to Chanse Menendez, under FINRA rules, a firm or individual named in a complaint can file a response and request a hearing before a FINRA disciplinary panel. Possible remedies include a fine, censure, suspension or bar from the securities industry, disgorgement of gains associated with the violations, and payment of restitution. The issuance of a disciplinary complaint represents the initiation of a formal proceeding by FINRA in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. Because this complaint is unadjudicated, interested persons may wish to contact the respondent before drawing any conclusions regarding the allegations in the complaint.